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DAMAGES ON THE REPUDIATION OF A CONTRACT.

In the April, 1908, Yale Law Journal (Vol. 17, p. 443), there is to be found an interesting article on the above subject by Mr. Joseph H. Beale, Jr. The question of the measure of damages is one lawyers seem less prepared upon, as a rule, than any other question arising in their cases; hence, good articles upon this subject are always interesting and welcome, particularly so where the damages arise out of a repudiation of a contract before time for full performance arrives. Under such circumstances the questions presented have been most perplexing, and many a lawyer has gone wrong with his advice, upon the supposition that the prospective damages, in view of a breach of the contract under consideration, were too remote for recovery.

Mr. Beale says (p. 449): "If, however, the suit is brought and actually comes to trial before the time fixed for performance, there is an element of uncertainty, because the jury can tell only by conjecture what would be the cost of performance at the time set therefor. This, however, should be regarded as no objection to the application of the ordinary rules of damages. It is true that in such a case values at the time of breach, or rather, at the time set for trial, will be introduced in evidence and will probably form the basis upon which the jury will find the values at the date of performance; but such actual values are introduced in evidence not because values at the time of breach are any importance in themselves, but merely evidence to prove the probable values at the time of performance. It is also true that by this means the plaintiff may in fact get a larger verdict than he would have obtained if the trial had been held after the date for performance. This will happen, for instance, when the market unexpectedly rises or falls, as the case may be, between the time of trial and time of performance. But as Mr. Chief Justice Fuller said in Roehm v. Horst, 'although he may receive his money earlier in this way, and may gain or lose by the estimate of his damages in advance of the time for performance, still, as we have seen, he has the right to accept the situation tendered him, and the other party cannot complain.'"

This is the generally accepted view; but in the important case of Masterton v. Mayor of Brooklyn, 7 Hill (N. Y.), 62, a different view was taken by the majority of the court. That was an action by a contractor who had agreed to deliver at the site of the city hall in the city of Brooklyn all the marble that might be required for building the edifice. The contract was made in 1836, and in 1837 the city cancelled it. Full performance could not have taken place until 1840. The action was brought before the performance could have been completed, but was not brought to trial until after the completion of the building. In order to find the profit of the contract it was of course necessary to determine the cost of the labor and materials required to deliver the marble at the building; and it was shown that the value of labor and materials fluctuated greatly between 1837 and 1840. The majority of the court expressed the view that these fluctuations could not be shown, and that the profit of the contract must be estimated according to the value of labor and materials in 1837, at the time when the contract was cancelled. Chief Justice Nelson said: "The damages are to be settled and ascertained according to the existing state of the market at the time the cause of action arose, and not at the time fixed for future performance." Judge Bronson concurred, saying: "This is the most plain and simple rule; it will best preserve the analogies of the law; and will be as likely as any other to do substantial justice to both parties." Judge Beardsley, on the other hand, said: "The expense of executing the contract must necessarily depend upon the

price of labor and materials. If prices fluctuate during the period in question, that may be shown by testimony. In this respect there is no need of resorting to conjecture; for all the data necessary to form a correct estimate of the entire expense of executing the contract can now be furnished by witnesses. If the cause had been brought to trial before the time for completing the contract expired, it would have been impracticable to make an accurate assessment of the damages. This is no reason, however, why the injured party should not have his damages." These expressions of opinion by the judges in Masterton v. Mayor of Brooklyn are only dicta, for the case was sent back for a new trial on another point; and these dicta have not been very largely followed. Indeed, they apparently do not now represent the law in New York. He says, however, that this case has been frequently cited on this point, "and more than one authority has treated the language of the majority as a sound statement of the law." That is to say, that damages are to be assessed at the time of the repudiation, and not at the time for full performance.

Mr. Beale's argument here shows what we have often maintained, that no hard and fast rule may be laid down so as to fit all cases. We are, however, a firm advocate of the rule laid down by Chief Justice Nelson, concurred in by Judge Bronson. There is one principle that must be kept in mind, where there has been a deliberate repudiation of a contract, and the breach is such that, at the time of it, the means of ascertaining the extent of damage for the future is uncertain, the law aids the remedy against the wrongdoer and takes every presumption in favor of the injured party and against the wrongdoer, and settles the question on the day of the breach if the injured party so desires. This is, as Judge Bronson says, the most plain and simple rule, and best preserves the analogies of the law, and will be as likely as any other to do substantial justice to both parties.

Mr. Justice Fuller's rule in Roehm v. Horst, has no other meaning than the above, for he says: "Although he may receive his money earlier in this way, and may gain or lose by the estimate of his damages in advance of the time for performance, still, as we have seen, he has a right to accept the situation *tendered him*, and the other party cannot complain." Now, it would seem impossible to escape the proposition that, if suit is brought before the time for full performance, the situation tendered by the repudiation has been accepted, and is not changed, even if the trial of the case does not take place till after time for full performance has arrived. What was sued upon was the situation the plaintiff had a right to accept at the date of the repudiation. Viewed in this light, it is plain that Roehm v. Horst is in exact accord with the most practical expressions in Masterton v. Hill. We think that Mr. Justice Fuller's expression that the situation is tendered by the party repudiating the contract, and he cannot complain if the other party accepts the situation tendered, is a very happy one, and ought to settle the question as to a plaintiff's rights. There has, in such cases, been a wilful breach; why should not the law aid the remedy to benefit the party so injured? Mr. Beale leaves out of consideration two of the most important and instructive cases on this question, which space prevents the consideration of in this connection, *i. e.*, Lake Shore & M. S. R. Co. v. Richards, 52 Ill. 73, 30 L. R. A. 33 and note; Dubuque & Sioux City R. Co. v. Jackson, 40 Ia. 264, both of which show the importance of the expressed rule in Masterton v. Brooklyn, *supra*.

NOTES OF IMPORTANT DECISIONS

CONTEMPT PROCEEDINGS — COLLATERAL ATTACK—MALICIOUS PROSECUTION.—It is held that a decree in contempt proceedings is not subject to collateral attack in Haskins v. Somerset Coal Co. (Pa.), 68 Atl. Rep. 843. Also that where one has been adjudicated in contempt and discharged on payment of costs, he cannot maintain an action of malicious prosecution against the petitioner on the ground

that the order of discharge was caused by the failure to make out a case against him. The action was for the recovery of damages for an alleged false imprisonment, the imprisonment growing out of an alleged violation of an injunction. On the petition being filed in court, alleging a violation of the injunction, an attachment was issued and plaintiff was arrested by the sheriff and confined in the county jail. On the return day he was given a hearing and was adjudged to be in contempt. The order made was as follows: "We do not now impose upon the said John Haskins any fine, but direct that upon the payment of costs he be discharged from the custody of the sheriff." A nonsuit was entered on a ruling of the court, among other rulings, that "the decree of the court in contempt proceedings was binding upon a court of co-ordinate jurisdiction." The court then goes on to say that "In Williamson's case, 26 Pa. 9, 67 Am. Dec. 374, it was said: 'A sentence for contempt is not essentially different from any other judgment, decree or sentence. It is a matter adjudicated and it belongs to the very essence of governmental order that it cannot be reviewed, except by the court that pronounced it or by its official superior.' * * * The order of court discharging the plaintiff on payment of costs was not, as argued, a discharge because of a failure to make out a case against him. It was, in effect, a sentence to pay the costs following an adjudication that he was in contempt."

The case is rather novel in that it is both a collateral attack and an effort to recover damages for imprisonment growing out of violation of an injunction.

MOUNTING SLOWLY MOVING CAR—SUDDEN JERK, CAUSING INJURIES.—In deciding that to attempt to board a slowly moving car is not necessarily negligent, the Supreme Court of Georgia says, in Rome Ry. & Lt. Co. v. Keel, 60 S. E. Rep. 464: "To attempt to mount a slowly moving street car is not necessarily negligent. If while the passenger is getting upon the car the motorman, by producing an unusual and unnecessary jerk, throws him off, a liability against the company may be predicated thereon. Also a sudden acceleration of the speed while the passenger is in the act of getting aboard may be negligent. White v. Atlanta Consolidated Street Ry. Co., 92 Ga. 494, 17 S. E. Rep. 672; Gainesville Ry. Co. v. Jackson, 1 Ga. App. 632, 57 S. E. Rep. 1007. In Ricks v. Georgia Southern & Fla. Ry. Co., 118 Ga. 259, 45 S. E. Rep. 268, a recovery was denied because the sudden acceleration of the train had begun and was already dangerous when the plaintiff tried to catch a car rail, which he missed. In the transaction now before us, if safe entrance into the car was reasonably practicable at the time the plaintiff attempted to mount, and the motorman negligently did something to render it dangerous, a liability might be predicated; but, if the attempt was fraught with danger ab initio, and the motorman did nothing to increase the danger, the plaintiff should not recover, though he succeeded in accomplishing a part of what was attempted without actually encountering injury."

SOME SPECIAL APPLICATIONS OF MAXIMS CONCERNING IMPOSSIBILITY.

Introductory Statement.—The most usual applications of the maxims adverse to the requirement of impossibilities are made in the general domain of contracts. In fact, the term "impossible contracts" is commonly used to designate not only contracts impossible in their nature, but those in which there is impossibility in regard to the performance of the contract. Some phases of the subject, especially concerning failure to perform contracts by reason of sickness or other disability, have been heretofore considered by the present writer in this periodical.[1]

The aim of the present article, however, is to touch on some special and in the main, less familiar applications of the maxim that the law does not require impossibilities. These applications relate to the allegations in indictments, excusing demand, meaning of "reasonable time" in regard to bills of lading, covenants in leases, notice of tax sales, and denial of mandamus.

Various Applications as to Allegations in Indictments, Demand, Reasonable Time, etc.—The application of the maxim that the law does not require impossibilities has sometimes been considered in criminal cases.

1. *To Allegations in Indictments.*—The Supreme Court of Missouri, for example, has upheld the present force of the maxim in holding that neither the organic nor the statute law requires that to be done which is utterly unreasonable, such as giving a specific description of the contents of a newspaper which was charged to be of a

(1) "Services Whose Performance is Excused by Sickness or Like Disability," Cent. L. J. Vol. 42, page 26, "Remedies on Sickness or Disability of Contracting Party." Cent. L. J. Vol. 48, page 250.

disreputable character. It was declared by Presiding Judge Gannt, speaking for that court,[2] that this maxim of the common law is as applicable in our day as in the days of Hobart.[3]

This is an instance, when impracticability may become impossibility. Public policy creates the impracticability, lest indecent matter be too fully set forth, and public morals be thereby corrupted.

2. *To a Court.*—The same court has, reasonably enough considered the maxim quite as applicable to a court as to an individual.[4]

Judicial power can do much, but it can hardly overcome impossibilities.

3. *To Demands.*—The maxim is also invoked as one means of determining when a demand need not be made. It is established that a demand is excused, when it is shown that it could not be complied with. It is also true that the obligation to make a demand is lacking when the making of the demand is proved to be impossible.[5]

This presents one of the most familiar and obvious applications of the maxim. The law has been charged with many absurdities, but it would ask nothing so preposterous as the making of a demand where that could not possibly be done as when, for instance, there was no one upon whom to make the demand at the required place.

4. *To "Reasonable Time."*—The maxim has also been naturally invoked in determining what constitutes reasonable time. In England, one of the law lords has referred to the maxim in protesting against putting a narrow and artificial meaning upon the words "reasonable time," as imported into a bill of lading which is silent as to the time when the consignee is to discharge the ship's cargo. He declared his opinion that unless *lex cogit ad impossibilia,* such reasonable time should be ascertained by a consideration of all circumstances, extraordinary as well as ordinary, which eventually happen, and which are outside the control of the consignee.[6]

To require what is manifestly unreasonable would substantially be, in this as in other cases, to ask what is impossible.

5. *To Enactment Making Performance Impossible.*—More comprehensively but less recently in the same country, a modern judge has explained the general meaning of the maxim, in its application to contracts as affected by a subsequent enactment making performance impossible. He held a lessee to have been discharged from his covenant not to allow any building on the land, through the force of a subsequent act of parliament, which put it out of his power to perform the covenant. The enactment had this effect by empowering a railway company which afterwards erected its station there, to compulsorily take the land for its purposes. The case seems clear. The lessee had agreed to allow no building on the land. But he could neither foresee nor overrule the action of parliament which led to the erection of a railroad station on the land. The judge pointed out, however, that

(2) In State v. Van Wye (1896), 136 Mo. 227, 37 S. W. Rep. 938, 58 Am. St. Rep. 627.

(3) In this instance an indictment against a person charged that on a day certain he sold a newspaper, whose name was specified and the place at which it purported to be published stated, and that said paper was mainly devoted to the publication of scandals, whorings, lechery, etc. The court thought that the defendant was thereby sufficiently advised of the nature of the accusation against him. It was considered that to require a more definite description would be to require a copy of the whole paper to be set out, which would be impracticable. To the authorities reviewed on this question of the extent to which obscene matter should be set out in the indictment, should be added those considered in the leading case of Commonwealth v. McCance (1895), 164 Mass. 162, 41 N. E. Rep. 133, 29 L. R. A. 61.

(4) This was said in support of the view that it would have been impossible for the circuit court to have held its sessions at a new county seat until some place had been provided for it. The statement was made as a basis for the position that the validity of an execution sale, if made at the old court house, could not be attacked. Bouldin v. Ewart (1876), 63 Mo. 330.

(5) Thus a demand for goods need not be made of a railroad company at the place to which they were to be carried, when the company had no office or agent there from whom the demand could have been made. Schroeder v. Hudson River R. R. Co. (1855), 5 Duer (N. Y.) 55.

(6) Lord Ashbourne in Hick v. Raymond (1892), Law Rep. (1893) App. Cas. 22, 62 Law. J. Q. B. 98, 68 Law Times N. S. 125, 41 Weekly Rep. 384, 7 Asp. Mant. Cases. 233, 1 The Reports, 125.

while a person would not be compelled to do what was not contemplated as possible at the time an agreement was made, yet he might bind himself to perform things which subsequently became impossible, where the impossibility arises from his own act or default, or might have been foreseen and guarded against.[7]

This explanation of one of the fundamental features of impossibility leads, however, toward such an exposition of the nature of impossibility as we have here neither space nor opportunity to give.

Does the Maxim Apply to Notice of Tax Sales?—A difference of opinion concerning the application of the maxim has, indeed, sometimes developed where notice of taxes is required to be posted in a public place. Thus in New Hampshire, in one striking instance, an incorporated township was entirely uninhabited. It was therefore considered that there could be no public place therein. Upon the strength, then, of the maxim that the law does not require impossibilities, no posting of an advertisement in a public place in the township was deemed necessary. But the result reached was not that the tax could not be collected. It was simply ruled by the supreme court of judicature that the tax might be collected without such an advertisement, if the other notices required by the statute were duly given.[8]

But a more rigid view of the necessity of complying with the requirement of posting notice was later taken by the same court, when the location was inhabited, there being six occupied dwelling-houses there. The difficulty was that a mere *private* dwelling-house is not ordinarily a *public* place. But the view taken by the court, after extended argument leading to a rehearing, as developed in opinions reviewing many local and other authorities, was that assuming that there was no public place in the location, there was no sufficient notice, and the sale of the land for taxes was void. It was considered that instead of the maxim that the law does not require impossibilities applying to the giving of the notice, it applied to the collection of the taxes. The latter and not the former, was regarded as the impossible thing which the law would not compel.[9]

The Maxim is Invoked or Applied as a Leading Ground for Denying Mandamus.—Some form of the maxim under consideration is invoked, or the principle underlying the maxim is applied as a leading ground for denying the extraordinary legal remedy of mandamus. As an English judge has put the matter: "A writ of mandamus supposes the required act to be possible and to be obligatory when the writ issues. Generally speaking, the writ suggests facts showing the obligation and the possibility of fulfilling it; a return pursuing this suggestion and following it is good."[10]

The doctrine that the required act must be possible and that it is enough to deny its possibility, seems to be impliedly supported where a return is sustained denying that the defendant had any books of account, etc., of churchwardens, such as were required to be delivered in his possession,[11] or where a mandamus to commissioners of sums to make a rate to reimburse an expenditor, was denied upon a return that the

(7) Hannen, J., speaking for the court in Bailey v. De Crespigny (1869), Law R. 4 Q. B. 180, 38 Law J. Q. B. 98, 19 Law Times (N. S.) 681, 17 Weekly Rep. 494.

(8) Wells v. Burbank (1845), 17 N. H. 393.

(9) Cahoon v. Coe (1876), 57 N. H. 556, per Stanley J. C. C., at p. 597, and per Cushing, C. J. at p. 579. Stress was laid upon the fact (See the opinion by Rand, J., at p. 576) that the decision in the earlier case was subsequently mentioned as if the chief ground for adhering to it was not to disturb rights vested thereunder, in Wells v. Company (1866), 47 N. H. 235, per Bartlett, J., at pp. 255-56. It was also claimed (by Cushing, C. J., in the case first cited, of Cahoon v. Coe, 57 N. H. 556) that what was said on this matter in the earlier case was merely dictum, because the judge said he had no occasion to inquire how the court might hold if there had been a dwelling-place within the township, but no place more public.

(10) Lord Campbell, C. J., in Regina v. London & North Western Ry. Co. (1851), 6 Ry. & Canal Cas. 634, 1 El. & Bl. 199, note, 72 Eng. Com. Law, 199, note.

(11) Rex v. Round, (1835), 4 Ad. & El. (Eng.) 139, 31 Eng. Com. Law, 43.

commission expired in four days, and that they had not time, the court considering that there was then no power in anybody to execute the writ.[12]

In an English case the court referred to an earlier case where a mandamus was denied which commanded a railway company to purchase lands to make and complete a branch road, where the powers of the company for the compulsory purchase of lands had expired before the writ issued or was applied for. The same judge said in the later case: "Our doctrine there was, that on mandamus *Nemo tenetur ad impossibilia.*"[13]

We cannot here, however, enter fully into the relation of this maxim to mandamus. That would require too extensive consideration. We are here seeking merely to indicate, not to exhaust, the applications of the maxim.

NATHAN NEWMARK.

San Francisco, Cal.

(12) Rex v. Commissioners of Sewers in Essex (1726), 2 Strange (Eng.) 763, 2 Ld. Raym. 1479. The incidental position that the return to the writ is good, if it pursues the suggestion of the writ, is sustained by Rex v. Penrice (1731), 2 Strange (Eng.) 1235; and impliedly by Rex v. Williams (1828), 8 Barn. & C. (Eng.), 681, 15 Eng. Com. Law, 335, 32 Eng. Rev. Rep. 511, Rex v. Hill (1690), 1 Shaw. (Eng.) 253; and apparently also in the before-cited case of Rex v. Round (1835), 4 Adol. & El. (Eng.), 139, 31 Eng. Com. Law, 43. But a different view appears to be favored in Rex v. Governors, etc., of St. Andrew & St. George (1839), 10 Adol. & El. 736.

(13) Regina v. Ambergate, etc. Ry. Co. (1853), 1 El. & Bl. 372, 72 Eng. Com. Law 371.

MISTAKES OF LAW AND EQUITABLE RELIEF THEREFROM—CANCELLATION OF INSTRUMENTS BECAUSE OF MUTUAL MISTAKES OF LAW.

BURTON v. HADEN.

Supreme Court of Appeals of Virginia, March 12, 1908.

Ordinarily a mistake of law, pure and simple, is not ground for relief, but the doctrine "Ignorantia juris non excusat" is confined to mistakes of the general rules of law, and has no application to mistakes of persons as to their own private legal rights.

Where a person is ignorant or mistaken in respect to his private legal interests, and enters into a transaction, the legal scope and operation of which he correctly understands, for the purpose of affecting his assumed rights, equity will grant relief, treating the mistake as analogous, if not identical, with a mistake of fact; and hence, where a person who owned a fee-simple estate in land believed herself the owner of only a one-third interest, and conveyed her entire interest under that mistaken belief to a grantee laboring under the same mistake for a grossly inadequate consideration, equity will set aside the conveyance.

KEITH, P.: The bill in this case was filed by Mrs. Engenia L. Haden against Belle G. Burton and Gabriella T. Burton, heirs at law of E. H. Burton, the object of which is to set aside and annul a conveyance made May 20, 1904, by Mrs. Haden to E. H. Burton. This deed is as follows:

"This deed made this 20th day of May, 1904, between Engenia L. Haden, party of the first part, and E. H. Burton, party of the second part:

"Witnesseth: That for and in consideration of the sum of nine hundred dollars, the receipt of which is hereby acknowledged by the said party of the first part, evidenced by the bond of said party of the second part for the said sum of $900.00, bearing even date herewith and payable to the said Eugenia L. Haden one year after date, with interest from date, for the payment of which a vendor's lien is hereby especially reserved on the land herein conveyed, the said party of the first part hath granted, sold and conveyed, and by these presents doth grant, sell and convey unto the said party of the second part, with general warranty of title, all the right, title and interest of the said Eugenia L. Haden, party of the first part, which said party of the first part acquired under the last will and testament of M. L. Burton, deceased, by the exercise of the power of appointment vested in said M. L. Burton, in and to that certain tract of land situate, lying and being in Campbell county, containing 340 acres, more or less and described as follows:

* * * * * *

"It being the same tract of land which was conveyed by Madison Haden in trust for the benefit of the said M. L. Burton, deceased, with power in said M. L. Burton to appoint by her last will and testament one of her brothers or sisters to the remainder interest therein, after the death of said M. L. Burton, deceased, by deed dated February 6, 1891, and of record in the clerk's office of the county court of Campbell in Deed Book 55, page 209. The power of appointment contained in said deed having been exercised by said M. L. Burton, deceased, in favor of the said party of the first part, in her last will and testament, which

said will is recorded in the clerk's office of the corporation court for the city of Lynchburg in Will Book J, p. 275. To which deed and will reference is hereby made.

"To have and to hold unto him, the said E. H. Burton, his heirs and assigns forever.

"It is conceded by said Eugenia L. Haden, party of the first part, that said E. H. Burton, has title to an undivided two-thirds interest in the above-described property. And the said Eugenia L. Haden hereby disclaims any interest or claim to the said undivided two-thirds hereby admitted to be vested in said E. H. Burton.

"But whatever be the interest of the said Eugenia L. Haden in and to said tract of land, it is the intent of this deed to convey the whole of her said interest, be the same one-third or more, to the said E. H. Burton.

"The said party of the first part hereby covenants with the said party of the second part that she is seized of said property in fee simple; that she has the right to convey the same; that she has done no act to encumber the same; that said property is free from incumbrances; that the said party of the second part shall have quiet and peaceable possession of the same; and that she will execute such other and further assurances of title as may be requisite."

Without discussing the pleadings, it is sufficient to say that the bill claimed that the deed should be set aside, if for no other reason, upon the ground of mutual mistake as to the interest and title of the grantor in the tract of land which was the subject of the conveyance.

We do not deem it necessary to set out the wills and deeds, by force of which the title to the 340 acres embraced in the deed from Engenia L. Haden to E. H. Burton became vested in the grantor in that deed. It is beyond doubt that at the date of that conveyance Eugenia L. Haden was the fee-simple owner of the 340 acres of land; that she believed that she had title only to an undivided one-third interest therein; and that the most favorable position in which the grantee can be placed is that the mistake was mutual, and that the grantee as well as the grantor dealt with the subject-matter in the honest belief that she was the owner of an undivided one-third, and that he was the owner of the remaining undivided two-thirds interest in that tract.

It appears from the evidence that this deed was prepared by counsel for E. H. Burton, the grantee; that Burton carried the deed to Mrs. Haden; that he took her before a notary in Campbell county, by whom her acknowledgment was taken; that the relations between the grantor and grantee had been of the most intimate and confidential character; that she had implicit confidence in him and in his judgment, and frequently advised and counseled with him about business affairs. It appears that Mrs. Haden knew that the will of Mrs. Burton under which this tract of land had passed had been drawn by A. H. Burroughs, one of the ablest members of the Lynchburg bar. She knew also that E. H. Burton had consulted with Burroughs with respect to the title to this land; and when, therefore, in the course of negotiations with her, Burton stated that she owned only an undivided one-third interest in the land, she relied on that statement, and believed it to be true, and also accepted as true Burton's statement as to the value of the tract, which was placed at $2,700, and her interest of one-third at $900. So that, when all of these circumstances are considered, we repeat that the most favorable position in which E. H. Burton can appear in this record is that of having participated with his grantor in a mistake common to both.

It appears from the deed itself that the grantor was of opinion that she had title to only an undivided one-third interest, and that E. H. Burton, the grantee, already had title to the remaining two-thirds interest.

The judge of the circuit court, upon the evidence, ascertains the fair value of the land to be $5,000, which seems to be the result of an average of the estimates placed upon it by the witnesses. Upon this basis the one-third interest would be worth something more $1,600, for which the grantor only received $900; but by what was, without doubt, a mistake common to both, the grantor conveyed her entire interest, which was, as we have seen, a fee simple in the entire tract for $900, so that she received for this farm less than 20 per cent. of its value.

The circuit court set the sale aside, and from its decree an appeal was allowed.

The contention of appellant is: First, that the deed was a compromise of doubtful rights; and, second, that if the parties acted under a mistake, it was a mistake, not of fact, but of law, against which a court of equity will not relieve.

We do not think the claim that the deed was the result of a compromise of doubtful rights can be maintained. It presents none of the elements of a compromise. The grantee claimed a two-thirds interest in this tract of land, and obtained the whole of it. The grantor, under a mistake as to her rights, undertook to convey an undivided one-third interest, for which she received rather more than half of its value. It is true that the language of the deed is very clear: "It is con-

ceded by said Eugenia L. Haden, party of the first part, that said E. H. Burton has title to an undivided two-thirds interest in the above-described property. And the said Eugenia L. Haden hereby disclaims any interest or claim to the said undivided two-thirds hereby admitted to be vested in said E. H. Burton." That is not the language of the compromise of a doubtful right; but is the recognition of an undisputed right which she, acting under a mistake as to her title, was of opinion had already vested in her grantee, and in which she, therefore, had no interest, and over which she had no control. It is true that the deed continues: "But whatever the interest of the said Eugenia L. Haden in and to said tract of land, it is the intent of this deed to convey the whole of her said interest, be the same one-third or more, to the said E. H. Burton." But the deed is to be construed as a whole; and it is inconceivable that the grantee, with knowledge as to the condition of her title, and that she was the owner in fee simple of the entire tract, would have parted with it for the consideration named in the deed.

This brings us to consider whether or not the mistake under which the parties acted in this case was one against which a court of equity will grant relief.

There is a very full and interesting discussion of this subject in Pomeroy's Eq. Jur. (3rd Ed.), Sec. 841, et seq. The doctrine seems to be well settled that, in general, a mistake of law, pure and simple, is not an adequate ground for relief. But it has been held by judges of the highest ability that the general doctrine embodied in the maxim "Ignorantia juris non excusat" is confined to mistakes of the general rules of law, and that it has no application to the mistakes of persons as to their own private legal rights and interests. Pomeroy's Ed. Jur., Sec. 842.

In Cooper v. Phibbs, L. R. 2 H. L. 149, A., being ignorant that certain property belonged to himself, and supposing that it belonged to B., agreed to take a lease on it from B. at a certain rent. There was no fraud, no unfair conduct. All parties were equally aware of the facts. The House of Lords set aside the agreement on account of mistake, a majority of the judges calling it a mistake of fact. Lord Westbury, in the course of his opinion, said: "In such a state of things there can be no doubt of the rule of a court of equity with regard to the dealing with that agreement. It is said "ignorantia juris haud excusat;' but in that maxim the word 'jus' is used in the sense of denoting general law, the ordinary law of the country. But when the word 'jus' is used in the sense of denoting a private right, that maxim has no application. Private right of ownership is a matter of fact. It may be the result, also, of matter of law; but, if parties contract under a mutual mistake and misapprehension as to their relative and respective rights, the result is that that agreement is liable to be set aside as having proceeded upon a common mistake. Now that was the case with these parties. The respondents believed themselves to be entitled to the property. The petitioner believed that he was a stranger to it. The mistake is discovered and the agreement cannot stand."

In Livingstone v. Murphy, 187 Mass. 315, 72 N. E. Rep. 1012, 105 Am. St. Rep. 400, it is said: "A mistake as to the ownership of land is a mistake of fact in regard to which equity will grant relief, although the mistake arose from an erroneous view of the legal effect of a deed." In the course of its opinion the court further said: "The mistake was mutual, and it was one of fact, namely, as to the ownership of the northerly lot." The court adopts the language of Lord Westbury already quoted that: "Private right of ownership is a matter of fact. It may be the result also of matter of law; but, if the parties contract under a mutual mistake and misapprehension as to their relative and respective rights, the result is that agreement is liable to be set aside as having proceeded upon a common mistake"—and then proceeds: "And this is so, although the mistake arises from an erroneous view of the legal effect of a deed in the chain of title. Against such a mistake equity will relieve."

In Webb v. City Council of Alexandria, 33 Grat. 168, Judge Christian says: "While it is the general rule that mistakes in matter of law cannot be admitted as ground of relief, it is not a rule of universal application, especially in courts of equity. It is not an absolute and inflexible rule, but has its exceptions, though such exceptions, in the language of Judge Story, are few, and generally stand upon some very urgent pressure of circumstances. If the maxim is used in the sense of denoting general law, the ordinary law of the country, no exception can be admitted to its general application; but it is otherwise when the word 'jus' is used, in the sense of denoting a private right. If a man through misapprehension or mistake of the law, parts with or gives up private right of property or assumes obligations upon grounds upon which he would not have acted but for such misapprehension, a court of equity may grant relief, if, under the general circumstances of the case, it is satisfied that the party benefitted by the mistake cannot in con-

science retain the benefit or advantage so acquired."

The conclusion reached by Pomeroy in section 849, seems to be in itself reasonable, and to be supported by the highest authority: "Whenever a person is ignorant or mistaken with respect to his own antecedent and existing private legal rights, interests, estates, duties, liabilities, or other relation, either of property or contract or personal status, and enters into some transaction, the legal scope and operation of which he correctly apprehends and understands, for the purpose of affecting such assumed rights, interests, or relations, or of carrying out such assumed duties or liabilities, equity will grant its relief, defensive or affirmative, treating the mistake as analogous to, if not identical with, a mistake of fact. It should be carefully observed that this rule has no application to cases of compromise, where doubts have arisen as to the rights of parties, and they have intentionally entered into an arrangement for the purpose of compromising and settling those doubts. Such compromises, whether involving mistakes of law, or of fact, are governed by special considerations."

We are of opinion that there is no error in the decision of the circuit court, which is affirmed.

Affirmed.

Note.—Equity—Mistake of Law—Cancellation of Instruments.—The rule is well settled that equity will not relieve against mistakes of law, but there are so many exceptions to the rule that no little confusion has resulted. Where justice demands it, the courts have ever been ready to find ground for an exception to the rule, which will give relief. The rule is stated as follows in 16 Cyc. 75: "No general principle can be stated which will harmonize the cases. While the rule has been too often declared to be ignored, it seems to be founded upon a misconception of the maxim to which it is addressed and the efforts of the courts to engraft exceptions have led practically, in many cases to an annulment of the rule itself. In most cases where the rule is applied relief would have been denied under similar circumstances were the mistake one of fact. There are cases where one or both parties acted merely in ignorance of the law, with opportunity to inform themselves. A similar neglect as to a matter of fact would bar relief. Of course, to correct every transaction entered into with ignorance of the law would destroy the law itself by making it in each case what a party to be effected thought it was or ought to be. In cases, however, where both parties enter into the agreement, basing it on a mistaken assumption of the law relating to it, and are thus drawn into an arrangement different from that they had in contemplation, the courts would with more or less frankness find some means of affording relief."

Eaton on Equity, page 258, lays down the rule as follows: "There are qualifications to the general rule, which have given rise to an equitable jurisdiction to relieve on the ground of mistake of law. Many cases can be cited directly opposed to this jurisdiction but there is a long line of specific authorities, most of them undoubtedly correct in which relief for mistake of law has either been granted, or deemed to be a proper head of equity jurisdiction. All of these cases will, upon examination, be found, not upon the consideration of a mere mistake of law, stripped of all other circumstances, but upon an admixture of other ingredients going to establish misrepresentation, imposition, abuse of confidence, undue influence, mental imbecility, or that sort of surprise which equity uniformly regards as a just foundation for relief." Thus it has been held that equity will relieve from mistakes of law where they are accompanied by special circumstances, such as misrepresentation, undue influence, or misplaced confidence. Haden v. Ware, 15 Ala. 149; Boggs v. Hargrove, 16 Cal. 559; Sands v. Sands, 112 Ill. 225; Hollingsworth v. Stone, 90 Ind. 244. It is held in Lane v. Holmes, 55 Minn. 379, that, if a 'mistake of law' pure and simple, there is generally no remedy, but relief may be afforded in equity, if the surrounding circumstances are of such a nature that the adverse party is seeking to avail himself of the opportunities afforded by a mistake, and is attempting to enforce an unconscionable advantage without consideration, provided the other party is not blamable. It is further held, in that case, that equitable relief can be granted if there is a mistake of fact, or a mistake of law and fact combined, especially if it does not result in injury to the opposite party."

If the mistake is one of law and fact, though the latter is the result of the former, it has been held relief will be granted when justice and equity require it. Follman v. Curtis, 51 Me. 140. In Dietrich v. Hutchinson, 73 Vt. 134, the following language is used: "It is an unquestionable principle of equity that when an instrument is drawn and executed that was intended to carry into effect an agreement previously made, but which by mistake of draughtsman either as to law or fact does not fulfill the manifest intention of the parties, equity will afford relief because the execution of agreement fairly and legally made is a peculiar branch of equity jurisdiction and if an instrument intended to execute the agreement is for any reason insufficient for that purpose the agreement remains as much unexecuted as thought one of the parties had refused altogether to comply with it and a court of equity will grant relief as much in one case as in the other."

Another distinction on this subject has long been recognized. Equity will not grant relief where the instrument executed is that agreed upon by the parties, even though it may have a legal effect different from that intended, especially where the mistake was mutual. Hunt v. Rousmaier's Admr's., 8 Wheaton, 174.

CORRESPONDENCE.

CONSTITUTIONAL LAW—LAWS REDUCING THE PERIOD WITHIN WHICH ACTION MAY BE BROUGHT.

Editor Central Law Journal.

I have just read with some interest your recent article in Central Law Journal, vol. 66, page 235, concerning the late ruling of the supreme judicial court of Massachusetts, in the case of Mulvey v. City of Boston, 83 N. E. Rep. 402, in which that court held valid a statute which cut down the period of limitation in which an action for a personal injury of a certain class could be brought, from six years to two years, to go into effect in thirty days, and that it would have the effect to bar a right of action in thirty days after its passage, if the two-year period since the injury had then elapsed. Thirty days seems to be a very short period of time to allow for such a statute to take effect. A much more equitable rule, it seems to me, was declared by the supreme court of North Carolina in the case of Culbreth v. Downing, 121 N. C., page 205. There, in discussing the question as to what is a reasonable time for such a statute to take effect, the court says: "We therefore hold that a reasonable time shall be the balance of the time unexpired according to the law as it stood when the never exceed the time allowed by the new amending act was passed, provided it shall statute."

This rule allows a party intending to sue the same period of time he would have if his cause of action had arisen under the new statute, provided it would not have been sooner barred under the older statute.

With all due respect to the opinion of the Massachusetts court, it seems clear that the decision in the Mulvey case establishes a hard rule, and one that cannot be adhered to in the future.

JULIUS C. MARTIN.

Asheville, N. C., April 21, 1908.

JETSAM AND FLOTSAM.

RECEIVERS.

The statement has been made that "the settlement of affairs of insolvent monied corporations by the courts has done more than any other one thing to bring the administration of justice into disrepute." This statement is probably too broad, but that there has been great abuse in this direction cannot be doubted. Manifestly this ought not to be, because as was said in Beverly v. Brooke, 4 Gratt. 187, which is the leading case in this state, the receiver appointed is the officer and representative of the court, subject to its orders, accountable in such manner and to such persons as the court may direct, and having in his character of receiver no personal interest, but that arising out of his responsibility for the correct and faithful discharge of his duties." So that his maladministration is the maladministration of the court. It is the intent of the law that a receiver should be a preserver. He takes charge of the property pending litigation or reorganization, administers it, makes sales, collects proceeds or increase, and makes an accounting to the court. He is not a public prosecutor or penal officer of any sort. He is a trustee, and it is his duty to make out of the property in his charge the largest possible returns for creditors and owners. In the case of a bank it is his obvious duty, after protecting the interests of creditors and depositors, to care for the interests of stockholders. A receiver who by mistake or maladministration should force into liquidation a bank that ought properly and safely, have resumed business would be little better than a wrecker. Without any intent of special application, these considerations of the nature of receivership are appropriate at the present time, and are becoming more so every day. Receivership is a business trust and not a private plum. A receiver should be a man of unimpeachable honor and integrity, having sufficient knowledge and ability to manage the estate properly, without the intervention of any third party. The employment of expensive counsel is in many cases an abuse. The undue prolongation of the receivership in order that the receiver may fatten upon rich fees is a scandalous abuse of trust. The first duty of the receiver is to the property not to himself. The allurement of the picking is, in fact, one of the chief sources of receivership abuses. The criticisms of the receivership process, and the doings of the receivers are welcome. At the present time in this state there is one large railroad corporation in the hands of receivers, and it is not amiss to impress upon these officers of the court a lively sense of their duty. A glance at §§ 3405 to 3409 of the Virginia Code will reveal the importance of what we have said. The broad powers given to this officer by those sections should be carefully safeguarded from abuse, and he should be held to a rigid accountability to the court.—Virginia Law Register.

BOOK REVIEWS.

GROUNDS AND RUDIMENTS OF LAW.

We regard this work the most finished of Mr. Hughes' several productions. It is so wrought out as to be easily grasped by the reader. The brief history with which this work is introduced is comprehensive and intensely interesting, and presents the greatest defense of those matters wherein Lord Bacon has been criticized by his great contemporary and rival, Sir Edward Coke and others, which we have ever read. In all its hideousness he brings out the despicable conduct of Coke, in forcing his fourteen-year-old daughter to marry old John Villiers, in order that he might secure the influence necessary to his attainment of the political power he was seeking. He shows this conduct of Coke in contrast with Bacon's having taken presents from suitors who had cases in which Bacon was to sit as judge, in such a striking manner as to make Bacon's conduct pale into insignificance, in view of Coke's more than inhuman conduct towards his own young daughter, whom he sold in order that his abandoned selfishness might not fail of its objects. Bacon is Mr. Hughes' idol, and he declares his faith in him in

no uncertain terms. This faith, however, is not such that it can be said that its realm cannot be entered with reason, for he accompanies it with such powerful incident and cogent argument, that one is brought into full sympathy with it all and moved to worship at the same shrine. He demonstrates beyond cavil that, as a lawyer, Bacon is pre-eminently greater than Coke. To Bacon belongs the honor of bringing a code of equity into the body of our jurisprudence gathered from the genius of the Roman, which is, in truth, its crowning glory. Coke, in order to establish his system of jurisprudence, succeeded, through his bought political influence, in relegating equity to a secondary place for hundreds of years, aided by his disciple, Blackstone. The spirit of the common law became dominant and in spite of the effort of David Dudley Field, in the United States, to establish the Baconian system of jurisprudence by his code, the common law spirit has been so powerful that this code has lost largely of its significance through interpretations of it rendered by judges and lawyers imbued with this same common law spirit breathed into our jurisprudence by a man who, while yet remarkable for his legal ability, was one of the most despicable characters among great men. Mr. Hughes shows Coke's accepted maxims to have been derived from the civil law of Rome but given with the idea that they were of English origin.

Mr. Hughes shows Sir Francis Bacon so great in his philosophy of the law which England has at length accepted in spirit and truth and which was presented to us by Mr. Field even before England had come to recognize by any proceeding, that same philosophy, that we wonder that it could be possible that we have been so blind as not to have seen so glorious a light as that which Bacon set in our juridical heavens. It is shining more and more and will lighten up a more perfect day which we see dawning. That day will discover equity the dominating spirit of our jurisprudence and to aid in bringing this about, Mr. Hughes has produced a wonderful work in this volume he calls Grounds and Rudiments of Law. It contains the elements sufficient upon which to base a religion, a philosophy, or a nation's jurisprudence. Generally speaking, the whole land needs to be imbued with it to the end that we may have one simple form of procedure which will not only be worth while in each of our forty-six states, but everywhere the civil law is the basis of government, for in it is the genius of a wonderful people, who knew how to gather the accumulated wisdom of the preceding ages into the greatest system of jurisprudence the world has ever known, and whose precepts must live forever, lighting up ages yet to be, as they grow into a perfect day. He ranks St. Paul as one of the great jurisprudents of the ages.

He shows Bacon, wonderful as he is as a philosopher, to have achieved his crowning glory as a philosopher in his philosophy of the law. From this viewpoint he ranks Bacon, next to Christ, as a human benefactor. Upon this proposition he will find many who will differ with him who nevertheless will agree with him on other points. This comparison was unnecessary and does not strengthen his argument. It is enough that Bacon's own phophecy is being fulfilled that time and a foreign land would recognize him as a greater lawyer than Sir Edward Coke.

No one who has given much time and thought to Bacon's system of jurisprudence with a comprehensive grasp of the importance of his equitable principles gathered from the civil law which grew out of the accumulated wisdom of all the preceding ages, can but say that Mr. Hughes has a vast amount to justify his idolatry. The basic principles of justice are eterna.; the errors of Coke and Blackstone are turning to ashes, out of which Mr. Hughes beholds his idol rising "Phoenixlike to Jove." Around are gathered Mansfield, Story, Kent, Marshall and David Dudley Field, and many others, joining in one sublime chorus glorifying his wonderful work. We find ourselves in sympathy with Mr. Hughes' really great production. Anyone who will read it, chew and digest it, and then practice it, will advance the science of government wherever he is, for it is indeed truly Baconian. It furnishes the simplest rules to the attainment of justice by the simplest process. We need it in our philosophy of government to replace the crumbling foundations which are menacing the common weal of many a state.

With all his idolatry he yet nevertheless does not fail to recognize the good in Coke's works, and marks the fearlessness with which Coke repressed direct bribery and his abhorrence of it.

He thus shows forth the remarkable inconsistencies of great minds, experienced in the use of the principles which make for justice.

The work is a great one for the beginner, as well as for the advanced jurist. Who should be without such a book?

The work is by W. T. Hughes, in one volume of 356 pages, bound in buckram. Published by the author, and for sale by Central Law Journal Co.

HUMOR OF THE LAW.

FOR MISSED MEALS.

Samuel Davis, court stenographer of the second circuit, says that an Irishman who several years ago tried to engage the legal services of his father, had the oddest ground for a lawsuit he has ever heard of. The Irishman wanted to sue his landlady for $15. He explained that he had made a contract to pay her $3 a week for board, but she was to deduct 25 cents for every meal he missed. Having got the contract duly signed, Pat began to board elsewhere and charged the lady with whom he had contracted 25 cents for every meal he missed, $5.25 worth of meals each week, for which his contract required him to pay only $3, so that by staying away he made $2.25 clear. The landlady refused to pay him his profits and he wanted Mr. Davis to bring suit against her for him. "Father laughed at him a bit," Mr. Davis says, "and he got indignant." "A conthract is a conthract," said Pat, "and she ought to be made to live up to her'n just as well as me to mine." There were several other lawyers in town, and some of them were pretty hard up for cases, but I don't know of anybody that took that one after father turned it down.—West Virginia Bar.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Account, Action on—Failure to Verify Plea.**—Where, in an action on an open account, the account was not duly verified, the court properly refused to strike unverified plea of defendant.—General Specialty Co. v. Tifton Ice & Power Co., Ga., 60 S. E. Rep. 121.

2. **Action—Homestead Exemptions.**—A declaration held to state a cause of action in contract so that defendant may claim his homestead exemptions as against the judgment recovered.—Jewett v. Ware, Va., 60 S. E. Rep. 131.

3. **Adverse Possession—Title to Maintain.**—A sale of all the vendor's right, title, and interest to certain described property vests the whole estate in the vendee and serves as a basis of a description for ten years.—Read v. Hewitt, La., 45 So. Rep. 143.

4. **Appeal and Error—Absence of Statement of Fact.**—Where accused, who has used reasonable diligence to have his evidence incorporated in the appeal record, is deprived of a statement of facts, the judgment will be reversed that he may correct the record.—McRuffin v. State, Tex., 105 S. W. Rep. 811.

5.——Dismissal.—Where a motion for an appeal with the usual order was in the record and copied as part of the minutes, and the return day of the appeal was inserted in the order by the court, any error therein is not ground for dismissal.—Dilzell Engineering & Construction Co. v. Lehmann, La., 45 So. Rep. 138.

6.——Errors in Giving Abstract Instructions.—It is not reversible error to give abstract instructions unless the jury were thereby misled to the prejudice of the party complaining.—Fitzpatrick Square Bale Ginning Co. v. McLaney, Ala, 44 So. Rep. 1023.

7.——Exceptions.—Where on plaintiffs' objection the court denied defendant's motion to withdraw before final submission of the case, evidence admitted subject to plaintiff's exception, plaintiffs could not on appeal insist on their exception.—Spinney v. Meloon, N. H., 68 Atl. Rep. 410.

8.——Law of the Case.—A former decision in the supreme court constitutes the law of the case on retrial as to the questions considered and those necessarily involved therein. Colorado Salt Co. v. San Jacinto Oil Co., Tex., 105 S. W. Rep. 822.

9.——Moot Case.—Where, in an action to enjoin a lessee from interfering with the lessors in taking possession of portions of leased premises under the terms of the lease, the record presents to the appellate court only a moot case, the appeal will be dismissed.—Ludlow v. Murphy, Ky., 105 S. W. Rep. 887.

10.——Motion to Modify Judgment.—Though a personal judgment should not have been rendered in a mechanic's lien suit against the owner, its rendition was not ground for new trial where no motion was made to modify the judgment.—Home Brewing Co. v. Johnson, Ind., 83 N. E. Rep. 358.

11.——Questions Not Raised Below.—The supreme court will not pass on the constitutionality of a statute unless that question was made in the court below and the provision of the constitution alleged to have been violated clearly designated.—Griggs v. State, Ga., 60 S. E. Rep. 103.

12.——Questions Presented For Review.—Whether the trial court committed prejudicial error in calling a witness in a civil case of its own motion cannot be considered where the evidence given by the witness is not before the court.—Blackwood Coal and Coke Co. v. James, Va., 60 S. E. Rep. 90.

13.——What Constitutes Final Judgment.—A judgment to be final must state that defendant be dismissed without day, or that plaintiff take nothing by the suit, or otherwise refer to the disposition of the subject matter.—De-Armit v. Town of Whitmer, W. Va., 60 S. E. Rep. 136.

14. **Arbitration and Award—Setting Aside Award.**—Where independent questions are submitted to arbitrators, the fact that the award on one is bad held not ground for setting aside the award on the other questions.—Donaldson v. Buhlman, Wis., 114 N. W. Rep. 431.

15. **Assignments for Benefit of Creditors—Life Insurance.**—The right of beneficiaries in a life policy, as against the assignee for creditors of insured, held not affected by the mere giving by insured of a power of attorney to surrender the policy.—Townsend's Assignee v. Townsend, Ky., 105 S. W. Rep. 937.

16. **Attorney and Client—Attorney's Lien.**—Where a settlement has been made between the parties and the action dismissed after a notice of attorney's lien, the attorney may move to set aside the judgment of dismissal and intervene to establish his lien.—Lewis v. Omaha St. Ry. Co., Neb., 114 N. W. Rep. 281.

17. **Bailment—Care Required.**—Cotton ginners to whom cotton in controversy was delivered for hire and storage held bailees for hire and bound to exercise ordinary care.—Hackney v. Perry Ala., 44 So. Rep. 1029.

18.——Negligent Use of Property.—One who negligently drives a horse and buggy, hired by another, from a livery stable, into a trolley pole and street car, killing the horse and destroying the buggy, is liable to the owner.—Palmer v. Mayo, Conn., 68 Atl. Rep. 369.

19.——Remedies.—On a bailee's failure to return goods on demand, the bailor may sue in assumpsit for breach of contract in case for negligence, or in trover for conversion, if a conversion has occurred.—Hackney v. Perry, Ala., 44 So. Rep. 1029.

20. **Bankruptcy—Administration of Estate.**—A creditor of a bankrupt may not pursue and

subject to payment of his demand assets of the bankrupt existing at the time of the adjudication and not abandoned by the trustee; title to such assets being in the trustee.—Starr v. Whitcomb, Mich., 114 N. W. Rep. 345.

21.——Purpose of Bankruptcy Act.—The purpose of the bankruptcy act (Act July 1, 1898, c. 541, 30 Stat. 546 (U. S. Comp. Stat. 1901, p. 3422) is the relief of the bankrupt from debt, and the equal distribution of his assets, and is intended to provide a remedy against the debtor's acts in seeking an unequal distribution.—Webb's Trustees v. Lynchburg Shoe Co., Va., 60 S. E. Rep. 130.

22. **Banks and Banking**—Certificate of Deposit.—Plaintiff as assignee of the owner of money for which a certificate of deposit was made in the name of another, but was never delivered to him or under his control, held entitled to recover on the certificate.—Indiana Loan & Trust Co. v. Lincoln Trust Co., Mo., 105 S. W. Rep. 737.

23.——Compensation of Trustees.—That managing trustees of a bank in process of liquidation have not been active in defending actions by one of their number against the bank on an individual claim will not defeat their right to a reasonable compensation.—Gund v. Ballard, Neb., 114 N. W. Rep. 420.

24.——Liability for Negligence.—A bank with which a check was deposited for collection held liable, for negligence in the matter, only for the amount of loss to the depositor, which the latter must allege and prove.—Hendrix v. Jefferson County Sav. Bank, Ala., 45 So. Rep. 136.

25. **Brokers**—Contract of Employment. — A mere promise by one to pay another a commission on the sale of property whether effected by the former or latter held not enforceable unless the latter effects a sale.—Taylor v. C. C. Barbour & Co., Miss., 44 So. Rep. 988.

26. **Burglary**—Public Telephone Booth. — A railway porter held not to commit burglary in breaking open a drawer in a public telephone booth located in a depot waiting room and stealing money therefrom.—Love v. State, Tex., 105 S. W. Rep. 791.

27.——What Constitutes.—Where the testimony shows that defendant entered the house through an open door, and went out after committing larceny through a back window, it did not constitute a burglary.—Lockhart v. State, Ga., 60 S. E. Rep. 215.

28. **Burglary Insurance**—Risk Assumed by Insurer.—A laundry under lock and key, wherein valuable goods were stored held not within the provision of a burglary insurance policy which excepted goods stored in certain storerooms.—Michaels v. Fidelity & Casualty Co. of New York, Mo., 105 S. W. Rep. 783.

29. **Cancellation of Instruments**—Undue Influence.—The existence and exercise of undue influence sufficient to warrant the cancellation of an instrument may be found as a fact from all the circumstances, provided they reasonably lead to such an inference—Spencer v. Merwin, Conn., 68 Atl. Rep. 370.

30. **Carriers**—Delay in Transportation of Corpse.—A carrier held not liable for mental anguish from its breach of contract causing a delay of twenty-four hours in funeral arrangements.—Beaulieu v. Great Northern Ry. Co. Minn., 114 N. W. Rep. 353.

31. **Chattel Mortgages**—Power of Sale.—The power of sale in a chattel mortgage authorizing the mortgagee, on a condition broken, to take possession and sell, was a cumulative and not an exclusive remedy. — First Nat. Bank. v. St. Anthony & Dakota Elevator Co., Minn., 114 N. W. Rep. 365.

32. **Constitutional Law—Contract Rights.**—The assignee and successor of a toll road company held not deprived of its contract or property rights by an injunction restraining it from charging tolls for the use of the road after the charter of the original corporation had expired.—State v. Scott County Macadamized Road Co., Mo., 105 S. W. Rep. 752.

33.——Executive Powers.—Where the determination of a matter has been committed to a particular board or officer, and no appeal is provided for, its order or determination is final and not subject to collateral attack.—Campbell v. Youngson, Neb., 114 N. W. Rep. 415.

34.——Regulations as to Railroad Grade Crossings.—Rev. Act. April 14, 1903 (P. L. p. 660. Sec. 29), conferring jurisdiction on the court of chancery to compel railroads to cross streets in city in some other manner than at grade, is not unconstitutional as conferring on the court legislative powers.—City of Newark v. Erie R. Co., N. J., 68 Atl. Rep. 413.

35. **Contempt**—Findings.—That a prosecution for contempt in the presence of the court is postponed until the end of the proceeding in which the contempt is alleged to have been committed will not change the character of the prosecution as one for contempt in the presence of the court.—Connell v. State, Neb., 114 N. W. Rep. 294.

36.——Newspapers.—Where a newspaper publishes opinions of the supreme court, a misstatement of the court's conclusions in an opinion constitutes a contempt for which the newspaper may be punished.—In re Providence Journal Co., R. I., 68 Atl. Rep. 428.

37. **Contracts**—Execution.—Where a party to a contract had ample opportunity to read it before signing it, and the contents thereof were not misrepresented, he cannot evade the operation of the contractt by proof that he signed it without reading it.—Mitchell Mfg. Co. v. Kempner, Ark., 105 S. W. Rep. 880.

38. **Corporations**—Action Against Stockholders.—Where all the known assets of an insolvent corporation in the hands of a receiver have been sold and have realized no more than enough to pay costs a suit by a creditor against the stockholders to satisfy the debts is not premature.—Dilzell Engineering & Construction Co. v. Lehmann, La., 45 So. Rep. 138.

39.——Construction of Charter.—Where a corporation's charter limits its existence to 50 years, a provision that it should have "perpetual succession" did not extend such term or make it a corporation in perpetuity.—State v. Scott County Macadamized Road Co., Mo., 105 S. W. Rep. 752.

40.——Insolvency.—A creditor of an insolvent corporation in the hands of a receiver may sue for the corporation, the receiver, and associates of the receiver in the matters out of which the liability of the receiver has arisen.—Dilzell Engineering & Construction Co. v. Lehmann, La., 45 So. Rep. 138.

41.——Inspection of Corporate Books.—Right of a stockholder of a corporation to inspect

the corporate books will be controlled so as to safeguard the corporation from revealing a secret process in the manufacture of its product. State v. Lazarus, Mo., 105 S. W. Rep. 780.

42.——Powers of Officers.—The powers of a private corporation as to dealings with third persons are concerned, are primarily lodged in its board of directors, from whom the officers must derive such authority as is bestowed on them.—Taylor v. Sutherlin-Meade Tobacco Co., Va., 60 S. E. Rep. 132.

43. **Boundaries**—Counties.—Counties held political subdivisions of the state, created for public convenience in the administration of government, and without authority to alter their boundaries.—Russell v. C. N. Robinson & Co., Ala., 44 So. Rep. 1040.

44. **Courts**—Appeal from Probate Court.—An appeal from the probate court will not be dismissed because appellant entered his appeal in the superior court and paid the clerk the entry fee before the time for entry fixed by Rev. Laws, c. 142, Sec. 12.—Reardon v. Cummings, Mass., 83 N. E. Rep. 361.

45.——Jurisdiction.—The supreme court of appeals is a court of limited jurisdiction, and the burden is on one invoking its authority to establish its jurisdiction over the matter in controversy.—Forbes v. State Council, Junior Order United American Mechanics of Virginia, Va., 60 S. E. Rep. 81.

46.——Management of Estate.—An administrator, as against beneficiaries of the homestead remaining in possession, held not to acquire a present right of entry by virtue of and order of ordinary, directing sale of the homestead to pay debts and for distribution. — Craddock v. Kelly, Ga., 60 S. E. Rep. 193.

47.——Prerogative Writs.—Whether the supreme court will exercise its extraordinary jurisdiction is within its discretion, but where the sovereignty of the state or the liberty of the citizen is not affected, it has no discretion.—State v. Holmes, N. D., 114 N. W. Rep. 367.

48.——Rules of Court.—The promulgation of a general rule is a decision that the power to make such rule exists, and before reversing its decision sustaining it it should appear that the rule was neither authorized by law nor by inherent powers of the court of chancery.—In re Du Pont, De., 68 Atl. Rep. 399.

49. **Criminal Law**—Indeterminate Sentence Act.—A sentence "for a term of not less than six years, with a recommendation that the maximum term be not more than seven years," held to be a "fixing" of the maximum period.—Ex parte Richards. Mich., 114 N. W. Rep. 348.

50.——Insanity After Conviction.—Where the issue of insanity vel non of one convicted of crime is tried if the judgment be that he is sane, his sentence may be enforced at once; but if the verdict be that he is insane, he should be adjudged a lunatic and confined according to law.—Hollad v. State, Tex., 105 S. W. Rep. 812.

51.——Instructions.—The court in its instructions should be careful to guard against using abstract legal quotations so as to make them misleading under the circumstances of the case.—Holland v. State, Ga., 60 S. E. Rep. 205.

52.——Statement of Facts.—Where a statement of facts in a criminal case does not affirmatively appear to have been filed within the time allowed by the trial court, in the absence of a relieving excuse it cannot be considered on appeal. — Waddell v. State, Tex., 105 S. W. Rep. 796.

53. **Criminal Trial**—Election Between Different Dates.—The court's act in selecting one of two dates upon which a violation of law is charged and instructing as to it alone, submitting to the jury only evidence as to that date, amounts to an election by the state to rely upon that date only.—Wells v. State, Tex., 105 S. W. Rep. 820.

54.——Record on Appeal.—Where the record in a criminal case does not disclose either objections or exceptions to the overruling of the motion for a new trial only the record proper is before the supreme court for review.—State v. Parnell, Mo., 105 S. W. Rep. 742.

55.——Witnesses in Rebuttal.—When necessary to call witnesses in rebuttal of testimony introduced by accused, and the evidence is purely rebuttal, it may be given by witnesses whose names are not indorsed on the information.—Clemens v. State, Neb., 114 N. W. Rep. 271.

56. **Customs and Usages**—Rules Governing Customs.—Principles governing particular customs or trade usages held to require only their existence for a sufficient length of time to become generally known.—Arkadelphia Lumber Co. v. Henderson, Ark., 105 S. W. Rep. 882.

57. **Damages**—Delay in Transporting Corpse. —A breach of contract involves only such consequences as directly result therefrom and are within the contemplation of the parties, and which may be measured by some definite rule of compensation.—Beaulieu v. Great Northern Ry. Co., Minn., 114 N. W. Rep. 353.

58.——Evidence.—In an action for the negligent injury of plaintiff's minor son, plaintiff may not show that the son has fainting spells without connecting them with the injury.—Sloss-Sheffield Steel & Iron Co. v. Vinzant, Ala., 44 So. Rep. 1015.

59. **Dead Bodies**—Mental Anguish for Delay In Delivery.—There is a right of possession and transportation of dead bodies for burial which authorizes an action on the case for an infringement of such right, in the determination of which mental anguish is a proper element of damage. —Beaulieu v. Great Northern Ry. Co., Minn., 114 N. W. Rep. 353.

*60. **Death**—Damages.—A charge with reference to the damages recovered for wrongful death held not objectionable as misleading and authorizing the jury to charge defendant with damages twice for the same period.—Goodes v. Lansing & Suburban Traction Co., Mich., 114 N. W. Rep. 338.

61. **Deeds**—Impeachment.—A stranger to a conveyance and to the parties has no standing to impeach the transfer because no consideration is expressed on the face of the instrument. —Reed v. Hewitt, La., 45 So. Rep. 143.

62. **Evidence**—Disturbance of Public Assemblage.—The fact that defendant was in a crowd which disturbed a religious meeting will not support conviction without a showing that he participated in the disturbance.—Denny v. State, Tex., 105 S. W. Rep. 798.

63. **Divorce**—Alimony.—A wife, having obtained a divorce and alimony, held entitled to have a conveyance by the husband set aside, and to an injunction against the sale, on an alleged fictitious claim, of real estate in which

he had an interest as heir.—Babcock v. Babcock, 114. N. W. Rep. 352.

64.——Refusal to Allow Wife to Bear Children.—A husband having broken his promise to permit his wife to bear children if she would resume marital relations, she was not again required to return to him on his promise that he would waive his objections in that regard.—Dunn v. Dunn, Mich., 114 N. W. Rep. 385.

65. **Equity**—Pleadings.—Where all parties and subject-matter of a suit are before a court of equity, and a decree can be entered doing exact justice to all, technical defects in the pleadings will be overlooked.—Bigelow v. Sheehan, Mich., 114 N. W. Rep. 389.

66. **Escheat**—Parties Defendant.—A proceeding to have declared escheat property conveyed by a fraudulent will is properly brought against the administrator in possession of the proceeds, and not against the purchasers of the property.—State v. Lancaster, Tenn., 105 S. W. Rep. 858.

67. **Estoppel**—Laches.—A state should not be allowed to oust a corporation of its franchises where for many years it has seen the corporation expend large sums in improvements under a claimed right so to do under its charter.—State v. Lincoln St. Ry., Neb., 114 N. W. Rep. 422.

68. **Evidence**—Conclusions of Witnesses. — The question as to whether "many" or "few" people used a particular railroad crossing held not objectionable as calling for a conclusion of the witness.—Southern Ry. Co. v. Weatherlow. Ala., 44 So. Rep. 1019.

69.——Result of Experiments.—In an action for death at an electric railway crossing, defendant held not prejudiced by the exclusion of evidence of experiments to determine the distance within which the car could have been stopped.—Wilson v. Chippewa Valley Electric R. Co., Wis., 114 N. W. Rep. 462.

70.——Weight.—In trials by jury it does not follow that because one or more witnesses testified positively concerning a fact that a verdict contrary to the fact is against the evidence, though there is no contrary evidence.—Howard v. Louisville Ry. Co., Ky., 105 S. W. Rep. 932.

71. **Executors and Administrators**—Counsel Fees and Expenses.—In a suit by the executors, personally interested in the property involved, legatees of the estate intervening therein held entitled to reasonable compensation for counsel fees and expenses.—Bean v. Bean, N. H., 68 Atl. Rep. 409.

72.——Homestead Rights.—A suit by an administrator for the recovery of land in less than one year after his right of entry, against members of the family who remained in possession under the homestead right held not barred by laches.—Craddock v. Kelly, Ga., 60 S. E. Rep. 193.

73.——Management of Estate.—In complaint for land, mesne profits may be recovered by an administrator against an heir of intestate claiming as a distributee, where the land has been wrongfully withheld by such heir from the administrator.—Craddock v. Kelly, Ga., 60 S. E. Rep. 193.

74.——Time for Bringing Actions Against.—A bill to have the chancery court assume jurisdiction of the further administration of the estate of a decedent, and to require the administratrix of the deceased executor to make a final settlement held not barred by prescription.—Salmon v. Wynn, Ala., 45 So. Rep. 133.

75. **Fire Insurance**—Entire and Severable Contract.—Where a contract of insurance was entire and the premium payable in a gross sum, and it was avoided as to the buildings, it was likewise void as to the stock of goods therein contained.—Johnson v. Sun Fire Ins. Co., Ga., 60 S. E. Rep. 118.

76. **Forgery**—Elements of Offense.—A conviction of the forgery of a check purporting to be signed by a third person and payable to accused may be had, though it was not indorsed.—Spicer v. State, Tex., 105 S. W. Rep. 813.

77. **Fraud**—Measure of.—The measure of damages for fraud in inducing one to buy a note and mortgage by falsely representing that the note was amply secured by the mortgage is the deficiency in the value of the note and mortgage.—Barnes v. Whipple, R. I., 68 Atl. Rep. 430.

78. **Gaming**—Accessory.—Since an accessory is not connected with the offense, and is only connected with the offender after the commission of an offense, one may not be convicted as an accessory of running a gaming house.—Strong v. State, Tex., 105 S. W. Rep. 785.

79. **Highways**—Road Law.—Where the road law is adopted by the recommendation of the grand jury, road commissioners cease to exist in that county and an exercise of any judicial function by former road commissioners becomes legally impossible.—Varner v. Thompson, Ga., 60 S. E. Rep. 216.

80. **Homestead** — Extinguishment. — Wife's homestead rights in land of which her husband has merely an equitable title are dependent on the rights of her husband under the contract, and if his equitable estate becomes extinguished, the homestead right is also extinguished.—Ferris v. Jensen, N. D., 114 N. W. Rep. 372.

81. **Homicide**—Instructions. — Where there was no evidence as to a mutual combat an instruction as to the law of justifiable homicide in such a case, as laid down in Pen. Code 1895, Sec. 73, should not have been given.—Holland v. State, Ga., 60 S. E. Rep. 205.

82.——Instructions.—The omission to charge on the subject of involuntary manslaughter held not ground of reversal where the court charged that the same facts would result in acquittal.—Johnson v. State, Ga., 60 S. E. Rep. 160.

83.——Malice.—A threat uttered by accused against deceased shortly before the homicide was admissible as tending to show malice.—Golatt v. State, Ga., 60 S. E. Rep. 107.

84. **Husband and Wife**—Husband as Wife's Agent.—Where plaintiffs furnished lumber to defendant's husband on her credit while he was acting as her agent, the court properly charged that she might be liable on the ground of ratification, or estoppel by silence.—Lindsley v. Smith, Mich., 114 N. W. Rep. 340.

85.——Post-Nuptial Settlements.—Where the purpose of a voluntary settlement by a married woman is such that a power of revocation would be likely to defeat it, the absence of such power is not prima facie evidence of mistake.—Crumlish v Security Trust & Safe Deposit Co., Del., 68 Atl. Rep. 388.

86. **Injunction**—Irreparable Injury. — Complainant held not entitled to an injunction restraining defendant from laying a steam pipe

across a city lot to the possession of which complainant was entitled; his rights not being irreparably injured thereby.—Jacobs v. Lakeside Lumber Co., Wis., 114 N. W. Rep. 443.

87. **Insane Persons**—Defect of Parties Cured.—A motion to set aside a judgment settling an estate because one of the heirs was insane and not properly represented denied; such heir having died before the motion came up for hearing, and all his heirs being parties to the proceeding.—Staton v. Byron, Ky., 105 S. W. Rep. 928.

88. **Insolvency** — Reversionary Interests. — The reversionary interest of an assignor for the benefit of creditors in the real estate is subject to the lien of a judgment entered pending the insolvency proceedings, subject to be defeated by a sale by the assignee.—Northwestern Mut. Life Ins. Co. v. Murphy, Minn., 114 N. W. Rep. 360.

89. **Interstate Commerce** — Shipment of Liquors.—Where an agent of an express company accepts spirituous liquor in another state for delivery to a consignee in the State C. O. D., it is an interstate shipment.—State v. United States Express Co., W. Va., 60 S. E. Rep. 144.

90. **Intoxicating Liquors**—Social Clubs.—The statute prohibiting sales of intoxicants by unlicensed persons held not to permit a sale by a club or its agent to one not a member whom the seller may believe to be a member.—State v. Warcholik, Conn., 68 Atl. Rep. 379.

91. **Judgment**—Amendment.—Where a judgment fails to confirm to the verdict and includes a party as defendant against whom the jury made no finding, it may be amended.—Rucker v. Williams, Ga., 60 S. E. Rep. 155.

92. **Jury**—Disqualification.—Where accused was convicted, and a new trial granted, it was no ground of objection on the second trial that certain of the jurors then on the jury list had been summoned at the first trial, and had been stricken by the state or accused.—Johnson v. State, Ga., 60 S. E. Rep. 158.

93. **Justices of the Peace**—Appeal.—On appeal from a judgment of a justice, it is error, on failure of defendant to appear, to enter up judgment for plaintiff without proof.—Pickenpaugh v. Keenan, W. Va., 60 S. E. Rep. 137.

94. **Landlord and Tenant**—Distress Warrant.—Where a person signed a paper in the form of an affidavit to obtain a distress warrant, but no oath was administered, it constituted no lawful affidavit, required by Civ. Code 1895, Sec. 4818, and furnished no basis for the warrant.—Britt v. Davis, Ga., 60 S. E. Rep. 180.

95.——Equitable Issues.—Where a lease authorized the landlord to hold the grain raised for all advances made to the tenant, the landlord could not purchase outstanding debts of the tenant not incurred under the terms of the lease and hold the grain until they were paid.—Aronson v. Oppegard, N. D., 114 N. W. Rep. 377.

96.——Sale of Reversion.— Though land is subject to a lease containing an option to the lessee to purchase, the lessor may sell the reversion, and, having done so, the lessor and lessee cannot vary the terms of such option as against the purchaser.—Millard v. Martin, R. I., 68 Atl. Rep. 420.

97. **Libel and Slander**—Privileged Statements.—As against an action for slander, answers of a witness to questions asked by counsel not disallowed by the court are absolutely privileged.—Hendrix v. Daughtry, Ga., 60 S. E. Rep. 206.

98. **Liens**—Failure to Record.—A failure to record a claim of lien for labor done and material furnished in manufacturing and repairing personal property within ten days, as required by Civ. Code, 1895, Sec. 2805, held fatal to the maintenance of the lien where possession of the property is surrendered.—Mulkey v. Thompson, Ga., 60 S. E. Rep. 223.

99. **Life Insurance**—Beneficiaries.—A policy of assessment life insurance designating the wife and children of the assured as beneficiaries is testamentary in character, and must be construed according to the statute as well as the provisions of the policy, constitution and by-laws of the association.—Hall v. Ayers Guardian, Ky., 105 S. W. Rep. 911.

100.——Insurable Interests.—Where property is conveyed by deed subject to a land contract under which a third person is in possession, the grantee, as the owner of the record title, has an insurable interest therein.—Quackenbush v. Citizens' Ins. Co. of Missouri, Mich., 114 N. W. Rep. 388.

101. **Limitation of Actions**—Fraud.—Actual fraud or concealment of material facts held to suspend operation of statute of limitations until the party injured thereby discovers the fraud or might have discovered it by reasonable diligence.—Shuttleworth v. McGee, Tex., 105 S. W. Rep. 823.

102. **Logs and Logging**—Contract for Cutting Logs.—A contract employing one to cut and deliver timber construed, and held that a scale made as the logs were delivered was conclusive.—Loree v. Webster Mfg. Co., Wis., 114 N. W. Rep. 449.

103. **Mandamus**—Jurisdiction of Court. — A suit by a stockholder of a foreign corporation to compel its officers to permit him to inspect corporate books held within the jurisdiction of the court.—State v. Lazarus, Mo., 105 S. W. Rep. 780.

104.——To Compel Change of Venue.—A circuit judge will not be compelled by mandamus to change the venue of an action where there is no clear statutory requirement for the change and a number of questions were involved in the application.—State v. Circuit Court for Rock County, Wis., 114 N. W. Rep. 455.

105. **Master and Servant**—Contributory Negligence.—A car inspector going under a car without taking precaution by notice to a person operating a switch engine that he is going to place himself in such a position held guilty of contributory negligence.—St. Louis, I. M. & S. Ry. Co. v. Dupree, Ark., 105 S. W. Rep. 878.

106.——Dangerous Work.—Where a business is conducted by many employees working independently, and the work of one becomes periodically dangerous to the other, the master is bound to provide rules and regulations to give warning thereof.—Polaski v. Pittsburgh Coal Dock Co., Wis., 114 N. W. Rep. 437.

107.——Defective Appliances.—A master held liable to the parents of a minor for injuries to the latter from unsafe appliances furnished by defendant without warning.—Parrenin v. Crescent City Stockyard & Slaughterhouse Co., La., 44 So. Rep. 990.

108.——Injury to Servant.—In an action for death of a railroad trackman by being run over by a car backed against him, the burden was

on plaintiff to show that decedent was exercising due care at the time he was injured.—Lizotte v. New York Cent. & H. R. R. Co., Mass., 83 N. E. Rep. 362.

109.——Risks Assumed by Servant.—A torpedo placed on a railroad track held not an obstruction, the placing of which on the track constitutes negligence as to an employee of the railroad.—Mize v. Louisville & N. R. Co., Ky., 105 S. W. Rep. 908.

110.——Safe Place.—In an action for injuries to a miner by a fall of a portion of the roof of an entry evidence held to require submission of defendant's negligence and plaintiff's contributory negligence to the jury.—Garard v. Manufacturers' Coal & Coke Co., Mo., 105 S. W. Rep. 767.

111. **Mechanics' Liens**—Notice.—Where a contractor to furnish a furnace with attachments delivered all the articles except a water pan, for which he had to send to another state, the delivery of such part fixed the time within which notice to hold a lien must have been filed.—Home Brewing Co. v. Johnson, Ind., 83 N. E. Rep. 358.

112. **Mortgages**—Accounting.—In a suit by the owner of an equity of redemption against the mortgagee for an accounting and for damages by reason of a prior improper sale, complainant held not entitled to recover damages for injury to its business, reputation, and credit.—Manville Covering Co. v. Babcock, R. I., 68 Atl. Rep. 421.

113.——Power of Sale.—A mortgagor, having conveyed the premises subject to the mortgage, was without interest in the premises, and could not recover damages for an improper foreclosure.—Manville Covering Co. v. Babcock, R. I., 68 Atl. Rep. 421.

114. **Municipal Corporations**—Street Railroads.—The right of a street railway company to occupy city streets with its railway, granted by a vote of electors held a license coupled with an interest, and transferable.—State v. Citizens' St. Ry. Co., Neb., 114 N. W. Rep. 429.

115.——Validity of Procedure in Adopting Ordinance.—An ordinance may be adopted at a special meeting, having been twice read at the last previous stated meeting, when from the call for the special meeting it may be fairly understood that the passage of the ordinance was one of the purposes for which such meeting was called.—Elliott v. Council of Newark, Del., 60 Atl. Rep. 400.

116. **Negligence**—Contributory Negligence.—A railway passenger injured by being struck by an express truck on station platform held not guilty of negligence barring recovery for his injury.—Clark v. American Express Co., Mass., 83 N. E. Rep. 365.

117. **New Trial**—Motion Made After Term.—Motions for new trial made after the adjournment should not be entertained, except on a strong showing of good reason.—Dixon v. Mutual Life Industrial Ass'n., Ga., 60 S. E. Rep. 207.

118. **Nuisance**—Municipal Ordinances. — A general ordinance of a city held not to empower the municipal assembly to authorize by ordinance the carrying on of a business destructive of public health.—State v. City of St. Louis, Mo., 105 S. W. Rep. 748.

119. **Officers**—Liability of De Facto Officer.—One who acts by virtue of authority appertaining to an office which does not in fact exist held liable for his acts.—Varner v. Thompson, Ga., 60 S. E. Rep. 216.

120. **Parent and Child**—Undue Influence.—A conveyance of land by a father and his wife to his only surviving child and heir at law, in consideration of support, held not invalid for undue influence of the grantee.—Sanders v. Gurley, Ala., 44 So. Rep. 1022.

121. **Partnership**—Pleading.—To authorize a firm to sue in a partnership name it must plead that it was formed to carry on trade or business or for the purpose of holding property in the state.—McJunkin v. Placek & Fitl, Neb., 114 N. W. Rep. 411.

122.——What Constitutes. — Where several persons engage in a commercial enterprise under a firm name, each contributing his credit and services, upon an agreement to divide the net profits, all are liable as partners on a note executed for goods sold to the firm.—Hand Trading Co. v. Jones, Ga., 60 S. E. Rep. 154.

123. **Perjury**—Evidence.—To establish perjury the law requires two witnesses, or one witness corroborated by circumstances.—Parham v. State, Ga., 60 S. E. Rep. 123.

124. **Pleading**—Amendment.—An amendment to petition alleging liability of the same defendants to the same plaintiffs for commissions growing out of the same contract, but varying the statement as to the contract, held properly allowed.—Bunn v. Hargraves, Ga., 60 S. E. Rep. 223.

125. **Principal and Agent**—Authority of Agent.—Defendants having claimed that they delivered the cotton in controversy to B. on instructions from plaintiff's son, not shown to be her general agent, she was entitled to prove that the son had no authority to give such instructions.—Hackney v. Perry, Ala., 44 So. Rep. 1029.

126. **Principal and Surety**—Husband and Wife.—The presumption that a wife was the principal debtor, arising from the fact that her name preceded that of her husband on a note, may be rebutted by parol proof of circumstances indicating the contrary.—Hart v. Bank of Russellville, Ky., 105 S. W. Rep. 934.

127. **Public Lands**—Grant by State.—The failure or inability to locate or find upon the records any definite description of the land contemplated by a grant from a state is not a basis for the conclusion that there was in fact no land embraced in the grant.—State v. Dines, Mo., 105 S. W. Rep. 722.

128. **Railroads**—Injury to Person on Track.—Where a carrier has made proper arrangements for the exit of passengers from its station grounds, the passenger must use the ways provided, or he ceases to be a passenger and becomes at most a mere licensee.—Legge v. New York, N. H. & H. R. Co., Mass., 83 N. E. Rep. 367.

129.——Private Crossings.—Code 1904, Sec. 1294b (2), requiring railroad companies to construct wagonways across their roads, where they pass through one's land, applies alike to completed railroads and those in process of construction.—Adams v. Tidewater Ry. Co., Va., 60 S. E. Rep. 129.

130. **Receivers**—Appointment.—Where there is a judgment forfeiting corporate rights, the court can, independent of the request of anyone, exercise its judicial discretion whether it will or will not appoint a receiver.—Waters-Pierce Oil Co. v. State, Tex., 105 S. W. Rep. 851.

131. **Specific Performance**—Contract to Convey land.—A lessor having contracted to convey land to complainant which was subject to a lease containing an option to purchase, complainant was entitled to waive the objections to the incumbrance and compel specific performance.—Millard v. Martin, R. I., 68 Atl. Rep. 420.

132. **Street Railroads**—Injury to Pedestrian. —In an action for injuries to a pedestrian by a street car, plaintiff's negligence held not excused by the fact that the car was equipped with a single incandescent headlight instead of a searchlight in use on other cars.—Beirne v. Lawrence & M. St. Ry. Co., Mass., 83 N. E. Rep. 359.

133. **Taxation**—Assessment.—Where only 250 acres of a tract of coal land leased for 100 years had been opened up, only such amount should have been assessed as "improved and under development."—Commonwealth v. Pocahontas Coal & Coke Co., Va., 60 S. E. Rep. 84.

134.——Illegal Assessment.—In the description of land on a tax list by metes and bounds, a point of the compass named in the survey may be construed to mean an opposite direction when it appears to have been written by clerical error.—Hart v. Murdock, Neb., 114 N. W. Rep. 268.

135.——Injunction to Restrain Collection.—An injunction to restrain the collection of taxes, part of which are admitted to be equitably due, will not issue unless tender of such part is unconditionally made.—City of Jeffersonville v. Louisville & J. Bridge Co., Ind., 83 N. E. Rep. 337.

136. **Telegraphs and Telephones**—Damages for Delay in Delivering Message.—Where from a telegram to a physician a physician would have earned compensation for a journey for consultation, such damage would not be too remote on failure to deliver telegram.—Barker v. Western Union Telegraph Co., Wis., 114 N. W. Rep. 439.

137.——Delay in Message.—For breach of contract to send a message over its line a telegraph company held liable for such damages as may be reasonably supposed to have been within the contemplation of the parties.—Smith v. Western Union Telegraph Co., Neb., 114 N. W. Rep. 288.

138. **Tenancy in Common**—Purchase by Wife of Co-Tenant.—Where land is owned in co-tenancy is sold under a trust deed given by a former owner, a purchase by the wife of one of the co-tenants inures to the benefit of all the co-tenants.—Beaman v. Beamon, Miss., 44 So. Rep. 987.

139.——Waste. — Equity will not enjoin waste at the suit of one tenant in common, or joint tenant against another, unless the waste is destructive to the estate, or the respondent is insolvent.—Burris v. Jackson, Del., 68 Atl. Rep. 381.

140. **Trial**—Presumptions.—The presumptions and intendments that arise in support of a general verdict do not arise to establish a contradiction in the answers to special interrogatories, but that construction should be adopted which probably sustains the conflict.—New York, C. & St. L. R. Co. v. Hamlin, Ind., 83 N. E. Rep. 343.

141. **Trusts**—Accounting.—On the resignation of a trustee, the costs of the accounting before a commissioner should not be apportioned or taxed until after the coming in of the master's report.—Richmond v. Arnold, R. I., 68 Atl. Rep. 427.

142. **Turn Pikes and Turn Roads**—Estoppel to Use.—The public held not estopped to claim the right to use a toll road, after the expiration of the charter of the corporation operating the road, by the fact that the county court had sold its stock in such company.—State v. Cape Girardeau & J. Gravel Road Co., Mo., 105 S. W. Rep. 761.

143. **Usury**—Compound Interest.—Where an original obligation bears maximum interest, there is no consideration for an agreement for compound interest computed for a time past, but including such interest on interest in a renewal note does not make it usurious.—Sanford v. Lindquist, Neb., 114 N. W. Rep. 279.

144.——What Constitutes.—To the extent that an agreement for a loan undertook to charge complainant with her deceased husband's debt such agreement held usurious and void.—Darden v. Schuessler, Ala., 45 So. Rep. 130.

145. **Vagrancy**—Evidence.—That a defendant who is required to attend a city court where a charge is pending against him is not seen at other labor during that time is immaterial on a charge of vagrancy.—Harris v. State, Ga., 60 S. E. Rep. 207.

146. **Vendor and Purchaser**—Bona Fide Purchasers.—One appointed to take title to certain land after redemption from mortgage foreclosure for the benefit of the mortgagor, a creditor, and himself, was not a bona fide purchaser as against the mortgagor's other creditors.—Bigelow v. Sheehan, Mich., 114 N. W. Rep. 389.

147.——Misdescription of Land.—The purchaser of a lot may not rescind the sale because, in the description in the deed, the names of abutting streets were erroneously interchanged; the obvious error being corrected by a particular description.—Tepper v. Niemeier, Ky., 105 S. W. Rep. 896.

148. **Waste**—Injunction. — Where executors under the direction of a will, sold timber to obtain lumber to repair buildings on the farm and to pay debts, and complainant, a disinherited son, having unsuccessfully contested the will, appealed to the superior court, an injunction to stay waste cannot be awarded against the executors and the purchaser of the timber, insolvency not being shown.—Burris v. Jackson, Del., 68 Atl. Rep. 381.

149. **Waters and Water Courses** — Surface Water.—A culvert built by defendant across a road between his land and plaintiff's held not to injure plaintiff's land by increasing the flow of surface water thereon.—Lauenstein v. Lauenstein, Mich., 114 N. W. Rep. 383.

150. **Weapons**—Sufficiency of Complaint.—Where the complaint is in the language of the statute punishing one carrying knuckles made of any metal or any hard substance, proof of any kind of knuckles made of any metal or any hard substance is sufficient.—Hull v. State, Tex., 105. S. W. Rep. 787.